

**MARKHAM PLACE LLC
PROFFER STATEMENT
RZ 2014-MA-003**

October 10, 2014

Pursuant to Section 15.2-2303 (A) of the Code of Virginia (1950, as amended) and Section 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended) (the "Zoning Ordinance"), the applicant (as defined below) and title owners, for themselves and their successors and/or assigns (hereinafter collectively referred to as the "Applicant"), hereby proffer that the development of the parcel under consideration and shown on the Fairfax County Tax Map as 71-1 ((20)) 2 (the "Property") shall be in accordance with the following conditions ("Proffers") if, and only if, RZ 2014-MA-003 (the "Application") is granted. In the event the Application is approved, then any previous proffers for the Property are hereby deemed null and void and hereafter shall have no effect on the Property. In the event that this Application is denied, these Proffers shall be immediately null and void and of no further force or effect.

GENERAL

1. Conceptual Development Plan/Final Development Plan. The Property shall be developed in substantial conformance with the Conceptual Development Plan/Final Development Plan ("CDP/FDP") dated December 12, 2013, and revised through October 10, 2014, prepared by VIKA Virginia LLC, and consisting of 33 sheets, as further described below.
2. CDP Elements. Notwithstanding that the Conceptual Development Plan and the Final Development Plan are presented on the same sheets and defined as the CDP/FDP in Proffer 1, it shall be understood that the CDP consists of (i) the maximum square footage of permitted development on the Property, including the proposed mix and locations of uses as set forth on the CDP/FDP and as qualified under Proffer 5; (ii) the minimum proposed open space; (iii) the general location and arrangement, minimum setbacks, and maximum building height of the building on the Property as shown on the CDP/FDP; (iv) the points of access to the Property and accompanying pedestrian and vehicular circulation routes through the Property; and (v) the Public Parking Spaces (as defined in Proffer 13 below) (collectively, the "CDP Elements"). The Applicant reserves the right to request approval from the Planning Commission of a Final Development Plan Amendment ("FDPA") pursuant to Section 16-402 of the Zoning Ordinance for elements other than the CDP Elements for all or a portion of the Property and the CDP/FDP, provided such FDPA is in substantial conformance with these Proffers.
3. Minor Modifications. Minor modifications to the CDP/FDP may be permitted pursuant to Section 16-403 (4) of the Zoning Ordinance when necessitated by sound engineering or when necessary as part of final site engineering. Such modifications shall be permitted, provided: (a) the maximum height for the building is not increased beyond the heights identified on Sheet C-2 of the CDP/FDP and Proffer 7; (b) the minimum setbacks for the building are not decreased beyond the setbacks identified in Sheet C-2 of the CDP/FDP; (c) the amount of open space identified on Sheet C-2 of the CDP/FDP is not reduced; (d) the access to and from the Property remains as generally shown on the CDP/FDP; (e) the minimum number of Public Parking Spaces (as defined herein) in the parking structure is not reduced; (f) the commitment for the public

parks is not diminished; and (g) the Proposed Development otherwise is in substantial conformance with these Proffers and the CDP/FDP.

4. Future Applications. Any portion of the Property may be the subject of a Conceptual Development Plan Amendment ("CDPA"), FDPA, Proffered Condition Amendment ("PCA"), Rezoning, Special Exception ("SE"), Comprehensive Sign Plan ("CSP"), Special Permit, Variance or other zoning action without the joinder and/or consent of the owners of the other land areas, provided that such application complies with Par. 6 of Section 18-204 of the Zoning Ordinance and Section 15.2-2302 of the Code of Virginia, as applicable. Previously approved proffered conditions or development conditions applicable to a particular portion of the Property that are not the subject of such an application shall remain in full force and effect.

PROPOSED DEVELOPMENT

5. Proposed Development. The development proposed with this Application shall include primary uses of up to 310 multi-family dwelling units (the "Residential Units"), public uses (parks and Public Parking Spaces, as defined in Proffer 13) and a minimum of 6,000 square feet of gross floor area shall be designated for secondary uses ("Secondary Uses") as permitted under Section 6-403 of the Zoning Ordinance (collectively referred to as the "Proposed Development") and shall be developed in accordance with the tabulations set forth on Sheet C-2 of the CDP/FDP. Accessory uses and home occupations, including business centers inside the residential buildings are permitted. The Applicant reserves the right to construct service, resident amenity and storage uses in any cellar space. The cellar space shall not contain habitable Residential Units. Notwithstanding the above, no drive-through windows or facilities or any freestanding single occupant retail pad sites or buildings shall be developed. The existing use of the Property as a commercial recreation use (bowling alley) shall be permitted to remain and operate as a permitted interim use until such time as construction commences on the Proposed Development.

6. Secondary Uses. The Secondary Uses may include one or more eating establishments, retail sales establishments, business service and supply service establishments, financial institutions, garment cleaning establishments, personal service establishments, quasi-public uses, and repair service establishments, and shall be located on the ground floor of the building. Commercial off-street parking, including at a minimum the Public Parking Spaces, may also be permitted as a secondary use in the garage for those spaces that are not required parking spaces for the Proposed Development, but the area for such off-street parking shall not be included in calculating the minimum of 6,000 square feet of gross floor area of Secondary Uses as defined above. The Applicant reserves the right to locate outdoor seating on the Property outside of the Secondary Use space as generally depicted on the CDP/FDP. Notwithstanding, the Applicant may convert the Secondary Use space to amenity space for residents of the building (such as, but not limited to, a fitness center, business center, or community room), to live/work units or temporary residential occupancy if the Applicant is unable to lease the Secondary Use space for Secondary Uses within twenty-four (24) months of the issuance of the first Residential Use Permit ("RUP") for the Residential Units shown on the final site plan if the Applicant can demonstrate to the Zoning Administrator that it used best efforts to market the Secondary Use space for Secondary Uses (i.e., retained a qualified retail broker and marketed the space for a twenty-four (24) consecutive month period beginning no later than the issuance of the first RUP

for the Residential Units). At any time thereafter, the Secondary Use space may be converted back to its original purpose.

7. Building Height. The building height for the Proposed Development shall not exceed the maximum building height and projection shown on Sheet C-2 of the CDP/FDP. Building height shall be measured in accordance with the provisions of the Fairfax County Zoning Ordinance and shall be exclusive of those structures that are excluded from the maximum building height regulations as set forth in Section 2-506 of the Zoning Ordinance. Notwithstanding the foregoing, however, nothing shall preclude the Applicant from constructing the Proposed Development to a lesser building height than that which is represented on the CDP/FDP, provided the configuration of the building footprint remains in substantial conformance with that shown on the CDP/FDP.

ARCHITECTURE

8. Architectural Design and Building Materials. The architectural design and building materials for the residential building shall be in general conformance with the conceptual elevations shown on Sheets A-3.1 and A-3.2 of the CDP/FDP, but may be modified by the Applicant as part of final engineering and building design, provided that such modifications provide a similar quality of design and are in general conformance with the CDP/FDP. Exterior building materials and colors for the residential building, including the garage entrance and loading area, shall be substantially as stated on the Material Legends included on both Sheet A-3.1 and Sheet A-3.2, provided that final architectural details and accents may include other materials if they are in substantial conformance with the CDP/FDP. The loading area doors shall be closed when not in use. The parking structure facades shall be designed to screen the view of vehicles from the surrounding area and shall include materials consistent or compatible with those materials shown on the CDP/FDP and used on the residential building and shall incorporate innovative design techniques such as incorporation of public art, vegetative screens or other screening techniques, but do not need to have facades identical to the residential building. The final design of such screening shall be determined at the time of building plan and permit review.

9. Telecommunications Equipment. Subject to applicable Zoning Ordinance requirements (if any), telecommunications equipment may be placed on the building's rooftop. Any such facilities must be screened and/or set back sufficiently from the perimeter of the roof and penthouse such that they are not visible from the streets forming the boundary of the Property, at street level. Other screening measures may be used, such as including the facilities as part of the architecture of the building, utilizing compatible colors, or employing telecommunication screening material and flush mounted antennas.

10. Bird-Friendly Design Elements. The Applicant shall include one or more bird-friendly design elements, as determined by the Applicant, in the architectural plans for the Property. The bird-friendly design elements may include, but not be limited to, the use of color, texture, opacity, fritting, frost, patterns, louvers, screens, interior window treatments, or ultraviolet materials that are visible to birds, the angling of outside lights, reduction of bird attracting vegetation, the use of decoys, breaking of glass swaths, and articulation of bay and balcony projections to create non-flat surfaces and/or eliminate a mass of flat surfaces. Nothing herein

shall require the Applicant to obtain a bird-friendly LEED credit. Upon issuance of the building permit, the provisions of this Proffer shall be deemed satisfied.

11. Universal Design Features. All Residential Units shall be designed to meet the accessibility requirements as defined and required by 2009 Virginia Construction Code (or the current Building Code applicable at the time of building permit approval). The Applicant shall provide a minimum of two percent (2%) of the total number of Residential Units constructed on the Property with universal design features that may include, but not be limited to, the following:

- Front entrance doors that are a minimum of thirty-six (36) inches wide;
- Lever door handles instead of knobs;
- Light switches that are forty-four (44) to forty-eight (48) inches high;
- Thermostats a maximum of forty-eight (48) inches high;
- Electrical outlets a minimum of eighteen (18) inches high;
- A curb-less shower, or a shower with a curb of less than four and one-half (4.5) inches high; and/or,
- Grab bars in the bathrooms that are ADA compliant.

NOISE ATTENUATION

12. Noise Attenuation. Concurrent with the initial submission of a site plan for the residential building, the Applicant shall submit to the County an acoustical analysis detailing the projected noise impacts of the surrounding area on the Residential Units and proposed mitigation techniques (the "Noise Study"). The Noise Study shall be conducted in accordance with requirements established by the Department of Planning and Zoning ("DPZ") and shall be submitted to DPZ and the Fairfax County Department of Public Works & Environmental Services ("DPWES") for review and approval. The Noise Study shall include projected noise levels in the Residential Units, outdoor balconies/patios, and outdoor recreation areas shown on the submitted site plan based on the proposed final site topography and conditions as shown on the site plan (rather than existing topography and conditions). The Noise Study shall include the following information: site plan and cross section views of the source of the noise in relation to the residential building, the affected Residential Units, and the affected outdoor recreation areas, and the consultant's recommendations for appropriate noise attenuation measures to ensure that the affected areas meet the standards outlined below. A copy of the approved Noise Study shall be included with the submission of all building permit applications for the Residential Units. The building plan shall identify the noise-affected space's and the noise attenuation measures, including materials, to be provided to ensure that each such affected occupied space meets the standards outlined below.

- A. Acceptable Noise Levels within Residential Units. The Applicant shall provide noise attenuation measures in order to reduce interior noise in all Residential Units to approximately 45 dBA Ldn or less.

- i. Above 75 dBA Ldn. No Residential Unit (or portion thereof, such as outdoor balconies) may be established in areas projected to be impacted by noise levels greater than 75 dBA Ldn.
 - ii. 70 dBA Ldn to 75 dBA Ldn. In order to reduce interior noise to a level of no more than 45 dBA Ldn for Residential Units that are projected to be impacted by noise greater than 70 dBA Ldn (but not more than 75 dBA Ldn) the Applicant shall construct such units using the following acoustical measures:
 - a. Exterior walls shall have a laboratory sound transmission class ("STC") rating of at least 45;
 - b. Doors and glazing shall have a laboratory STC rating of at least 37 unless glazing constitutes more than 20% of any facade exposed to noise levels of Ldn 70 dBA or above;
 - c. If glazing constitutes more than 20% of an exposed facade, then the glazing shall have a laboratory STC rating of at least 45; and
 - d. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials ("ASTM") to minimize sound transmission.
 - iii. 65 dBA Ldn to 70 dBA Ldn. In order to reduce interior noise to a level of no more than 45 dBA Ldn for Residential Units that are projected to be impacted by noise projected greater than 65 dBA Ldn (but not more than 70 dBA Ldn), the Applicant shall construct such units using the following acoustical measures:
 - a. Exterior walls shall have a laboratory STC rating of at least 39;
 - b. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any facade exposed to noise levels of Ldn 70 dBA or above;
 - c. If glazing constitutes more than 20% of an exposed facade, then the glazing shall have a laboratory STC rating of at least 39; and
 - d. All surfaces shall be sealed and caulked in accordance with methods approved by the ASTM to minimize sound transmission.
- B. Noise Levels at Outdoor Recreation Areas and Balconies/Patios. The Applicant shall provide noise attenuation measures as determined necessary by the Noise Study, as approved by DPWES and DPZ, to ensure that traffic-related noise in the private outdoor recreation areas and balconies/patios does not exceed 65 dBA Ldn. Adjustments to the noise attenuation measures that are in substantial conformance with those indicated on the CDP/FDP may be permitted subject to

the approval of the Zoning Administrator to ensure that the noise attenuation measures provide the necessary noise attenuation.

- C. Noise Contours on Site Plans and Building Permits. All site plans, building permit applications and building plans submitted to the County for the Residential Units shall indicate whether such building is required to include noise attenuation measures and, if so, the type of attenuation measures to be implemented. Building and site plans for each unit that is subject to noise mitigation as provided herein shall depict the final noise contours as determined by the Noise Study. Notwithstanding, if the Noise Study concludes that there will not be a noise impact above the stated minimum thresholds based on the Proposed Development's design, then the Applicant shall be released from providing additional noise attenuation measures.
- D. Alternative Measures. As an alternative to the noise attenuation measures described above, the Applicant reserves the right to pursue other methods of mitigating highway noise impacts that can be demonstrated prior to the filing of a building permit, through an independent acoustical analysis, as reviewed and approved by DPWES and DPZ, provided such methods will be effective in reducing interior noise levels to approximately 45 dBA Ldn.

PARKING

13. Zoning Ordinance Parking Requirements. Parking shall be provided in accordance with the parking requirements of Article 11 of the Fairfax County Zoning Ordinance, as determined by DPWES, for the uses within the Proposed Development. The minimum number of parking spaces for the Residential Units and the Secondary Uses shall be the minimum number of parking spaces required under Article 11 of the Zoning Ordinance in effect as of the date of these Proffers. In addition, the Applicant shall provide a minimum of thirty (30) additional parking spaces within the parking structure designated for public use, as a public benefit to facilitate the redevelopment of the abutting commercial uses located along Little River Turnpike and Annandale Road ("Public Parking Spaces"). The Public Parking Spaces shall be made available for public use upon the issuance of the first RUP or Non-Residential Use Permit ("Non-RUP") for the Proposed Development. The Applicant shall designate the location of the Public Parking Spaces on the ground floor level in the parking structure, but shall retain the right to relocate them based upon appropriate demand, security, operational matters or future installation of a new garage entrance (by others) on the south side of the Property (as described in Proffer 30). Entry and exit from the parking structure and the Public Parking Spaces shall be controlled by the Applicant and may include an electronic or manned gate with card key or ticket access; provided, however, that any gate installed to control access shall be set sufficiently away from the road to prevent queuing of entering traffic from occurring within the future public street. The Applicant may, in its sole discretion, establish rules, regulations and procedures for the Public Parking Spaces. Appropriate wayfinding signage both inside and outside of the parking structure shall be installed directing customers to the Public Parking Spaces. The Applicant further reserves the right to provide parking spaces in addition to the total number of parking spaces shown on Sheet C-2 of the CDP/FDP (a) if such additional spaces result from the final design of the parking structure, (b) to the extent necessary to further accommodate future redevelopment of the

abutting Little River Turnpike and Annandale Road parcels under a future agreement between the Applicant and the owners of such abutting parcels, or (c) to the extent necessary to accommodate uses established on the Property that result in a higher parking requirement than is shown on the CDP/FDP. Any increase in parking greater than 10% above that shown on Sheet C-2 of the CDP/FDP will be subject to review by FCDOT at the time of final site plan review.

14. Future Parking Reductions/Shared Parking Arrangement. Given (a) the Property's proximity to the mass transit facilities located on Little River Turnpike, (b) the Property's location within the Annandale Commercial Revitalization Overlay District ("CRD"), and (c) the character of the Proposed Development as a mixed-use, urban development, the Applicant reserves the right to pursue a future parking reduction for the Proposed Development or a shared parking arrangement, as stated by the Comprehensive Plan for the Annandale CBC, and as may be permitted by Article 11 of the Fairfax County Zoning Ordinance and as may be approved by the Board of Supervisors.

15. Bicycle Parking. As part of site plan approval for the Proposed Development, the Applicant shall designate on the site plan and install secure bicycle racks, bike lockers, and/or bike storage areas to provide one (1) long-term bicycle storage space for residents for every three (3) Residential Units, one (1) short-term visitor bicycle space for every twenty-five (25) Residential Units, two (2) short-term bicycle spaces for every 10,000 square feet of gross floor area of Secondary Uses, or portion thereof, and one (1) long-term bicycle parking space for every 25,000 square feet of gross floor area of Secondary Uses, or portion thereof. Included in the number of bicycle spaces for the Secondary Uses specified above, the Applicant shall install a bicycle rack on the southwest corner of the Property for at least six (6) bicycle spaces, in close proximity to the Secondary Uses and the Linear Park and a bicycle rack in close proximity to the leasing office entrance in the northwest corner of the Property for at least six (6) bicycle spaces. The long-term bicycle parking spaces for the Secondary Uses shall be in the bicycle storage facilities in the parking structure. The Applicant also shall provide signage within the Property to guide bicyclists to the bicycle storage facilities. The Applicant shall determine the final locations of the secure bicycle storage, short-term bicycle racks, the type of bicycle racks, and bicycle signage in consultation with the Fairfax County Department of Transportation ("FCDOT") Bicycle Coordinator or his/her designee prior to site plan approval for the Proposed Development; provided, however, that the short-term spaces serving the Secondary Uses shall be located in the Linear Park in close proximity to such uses. The bicycle parking and storage facilities and the bicycle signage designated on the site plan shall be installed prior to the issuance of the first RUP for the Residential Units. Inverted U-shape bicycle racks shall count as two (2) bicycle parking spaces.

16. On-Road Bicycle Facilities. In combination with the street and streetscape improvements reflected in the CDP/FDP, the Applicant shall provide pavement for a future on-road bicycle lane along the Property's Markham Street frontage. Such pavement shall accommodate a future bicycle lane that is five feet (5') in width, inclusive of one foot inside the gutter pan, but the future striping of the lane shall be subject to approval by VDOT.

17. Electric Vehicle Charging Facilities. As part of the site plan approval for the Proposed Development, the Applicant shall designate on the site plan and install a minimum of one recharging station that serves two (2) parking spaces for electric cars within the residential

portion of the parking structure within the Property. The Applicant shall also provide either: (a) one or more additional recharging station(s) that each serves two (2) parking spaces for electric cars with the initial construction of the parking structure or (b) space and infrastructure to accommodate additional electric vehicle-ready parking spaces in the parking structure. "Electric vehicle-ready" means the provision of space, conduit banks, conduits and access points allowing for the easy installation of electric vehicle charging stations in the future, space for potential future installation of increased transformer capacity, and space within the electrical room to accommodate future electric capacity, and does not include the installation of transformers, switches, wiring or charging stations. No earlier than five (5) years after issuance of the final RUP or bond release, whichever event occurs first, if the Applicant demonstrates to the satisfaction of the Zoning Administrator that a particular recharging station is being utilized less than twenty percent (20%) of the time during any 90-day period, the Applicant may remove or disable the charging station.

LIGHTING

18. Lighting. All on-site outdoor and parking garage lighting provided with the Proposed Development shall comply with the Outdoor Lighting Standards of Section 14-900 of the Zoning Ordinance and shall be generally consistent with the outdoor lighting fixtures provided for other new developments in the Comprehensive Plan streetscape guidelines for the Annandale CBC, as determined by the Applicant in consultation with the Fairfax County Office of Community Revitalization ("OCR") during site plan review. All proposed parking garage and building mounted security lighting on the Property shall utilize full cut-off fixtures. Lighting details for Markham Street are shown on Sheet L-7 of the CDP/FDP. Pathway lighting in the proposed parks and public areas shall be provided to provide additional security and safety, as well as architectural accent and interest.

SIGNAGE

19. Signage. Signage for the Proposed Development shall be provided as depicted on Sheets C-6 and C-7 of the CDP/FDP or otherwise in accordance with the requirements of Article 12 of the Zoning Ordinance. All directional and way finding signage shall be consistent, both in terms of materials and design, throughout the Proposed Development. The Applicant reserves the right to obtain approval of a Comprehensive Sign Plan ("CSP") at any time that would permit modifications to the provisions of Article 12 of the Ordinance without obtaining a PCA, CDPA or FDPA.

LANDSCAPING

20. Landscape Plan. The Applicant shall implement the landscape design for the Proposed Development shown on the CDP/FDP (the "Overall Landscape Plan"), which illustrates the plantings and other features to be provided with the Proposed Development, including streetscapes, plazas and parks.

- A. Native Species. The Applicant shall use native species to the extent practicable throughout the Proposed Development, provided that the Applicant reserves the right, in consultation with and approval by the Urban Forest Management

Division of DPWES ("UFMD"), to modify as part of site plan approval for the residential building the species to be used, such as when some plant materials are not available or have been deemed by UFMD to no longer be appropriate.

- B. Site Plan. As part of the initial site plan submission and all subsequent submissions for the Proposed Development, the Applicant shall submit to UFMD for review and approval a detailed landscape and tree cover plan (the "Landscape Plan") for the residential building, which shall include, among other things:
 - i. Irrigation information;
 - ii. Design details for modified planting areas, tree wells or grates and other similar planting areas above structures and along streets;
 - iii. Composition of the planting materials and/or structural soils used for street trees or where plantings are to be located within or on top of structures and other methods to be used to ensure the viability of the proposed plantings; and
 - iv. Information demonstrating that the Landscape Plan is consistent with and is part of implementation of the SWM Plan defined in Proffer 20.
- C. Planting Quality. Each Landscape Plan shall be consistent with the quality and quantity of plantings and materials shown on the Overall Landscape Plan of the CDP/FDP and may include the use of additional shade trees and other plant materials as determined by the Applicant. As part of final engineering and site design, the Applicant may adjust the type and location of vegetation and the design of the public spaces, courtyard and plaza areas and streetscape improvements and plantings, including adjusting the tree species and shifting the locations of street trees, to accommodate final architectural designs, sight distance concerns and utilities, as well as to facilitate outdoor elements in the Proposed Development, as approved by UFMD, provided such adjustments otherwise are in substantial conformance with the CDP/FDP.
- D. Open Space Designs. As part of final engineering and design, and subject to review and approval by the County, the Applicant may elect to modify the designs of the various open space areas from the designs shown on Sheets C-5, C-6, and L-1 of the CDP/FDP, provided that such modifications are in substantial conformance with the CDP/FDP, as determined by the Zoning Administrator, and offer a similar quality of design and quantity of plantings and materials as those shown on the CDP/FDP and are in accordance with Section 16-403 (4) of the Zoning Ordinance.
- E. Planting Strips. The Applicant shall install street trees consistent with the CDP/FDP (and as defined below). For trees not planted with an 8-foot wide minimum planting area, or that do not meet the minimum planting area required by the Fairfax County Public Facilities Manual ("PFM"), the Applicant shall provide details for alternative designs showing how the proposed planting spaces

shall provide for normal tree growth and performance by installing structural cells or an equivalent solution acceptable to UFMD, to satisfy the following specifications:

- i. A minimum of four (4) feet open surface width and sixteen (16) square feet open surface area for Category II, III and IV trees (as defined in Table 12.17 of the PFM), with the tree located in the center of the open area;
 - ii. A minimum rooting area eight (8) feet wide, which may be achieved with techniques such as, but not limited to, structural cell technology, to provide un-compacted soil below pavement/walkways, with no barrier to root growth within four (4) feet of the base of the tree;
 - iii. Soil volume for Category II, III and IV trees (as indicated in Table 12.17 of the PFM) shall be a minimum of 700 cubic feet for single trees. For two (2) trees planted in a contiguous planting area, a total soil volume of at least 1,200 cubic feet shall be provided. For three (3) or more trees planted in a contiguous area, the soil volume shall equal at least 500 cubic feet per tree. A contiguous area shall be any area that provides root access and soil conditions favorable for root growth throughout the entire area;
 - iv. Soil in planting sites shall be as specified in planting notes to be included in all site plans reviewed and approved by UFMD;
 - v. The soil volumes noted above shall be provided regardless of the type of pedestrian zone in which the trees are proposed to be planted; and
 - vi. It is expected that some street tree planting sites will be designed to accommodate bio-retention functions.
- F. Tree Replacement. The Applicant shall replace any new tree that is planted on the Property and is counted toward meeting the overall tree canopy requirement that is damaged, such that the tree is no longer viable, as determined by UFMD, with a tree of equal or greater size. The size of the replacement tree shall be based on the caliper size of the tree to be replaced as shown on the final site plan.
- G. Fire Marshal Review. The Applicant has coordinated the layout depicted on the CDP/FDP with the Fire Marshal. If, however, it is determined during site plan review that street tree locations conflict with subsequent comments from the Fire Marshal, the Applicant shall first make efforts to gain the Fire Marshal's approval of such trees by making minor adjustments to their locations or category of tree, or by removing their lower branches. Changes to the CDP/FDP shall be permitted in response to the review of site plans by the Fire Marshal, including adjustments to tree locations, the streetscape and perimeter building areas as necessary to all for required emergency vehicle access, without requiring approval of a PCA, CDPA or FDPA, provided such modifications are made in consultation with DPZ and are in substantial conformance with the CDP/FDP and these Proffers. If it is determined that the conflicting trees cannot be relocated, but must be deleted, then

the Applicant shall make a payment to the Fairfax County Tree Preservation and Planting Fund in the amount of the cost of the trees not being installed and such payment shall be used for planting trees elsewhere within the Annandale CBC. While trees may be deleted or relocated in response to Fire Marshal requirements, this does not relieve the Applicant from meeting the 10-year tree canopy requirements, as shown on the CDP/FDP.

21. Streetscaping. The Applicant shall provide streetscape improvements and plantings ("Streetscape") as indicated on the Overall Landscape Plan shown on the CDP/FDP. The Applicant shall enter into a maintenance agreement with FCDOT and/or VDOT, as applicable, for the maintenance or replacement in-kind, by the Applicant, of any Streetscape element required under this Proffer 21 that are located within public right-of-way, including all plantings (trees, shrubs, perennials and annuals). As stated in Proffer 20 and Proffer 28, the Applicant may make minor modifications to the Streetscape, including shifting the locations of street trees, to accommodate final architectural designs, sight distance concerns and utilities, and compliance with the Annandale CBC design guidelines, as well as to facilitate Fire Marshal concerns, provided that such changes are in substantial conformance with these Proffers and the CDP/FDP and as approved by the County.

22. Public Access Easements. As part of site plan approval for the Proposed Development, the Applicant shall grant public access easements for both vehicular and pedestrian traffic, as applicable, over the public parks, the Public Parking Spaces, the Tail Piece (as defined below), and perimeter sidewalks/trails around the Property, as generally shown on Sheet C-5 of the CDP/FDP. The easements shall also allow for the installation of signage necessary for safety and operation of the abutting streets. The form of the public access easements shall be acceptable to the County Attorney.

23. Utility Locations. Utilities, including, but not limited to water, electric, sanitary sewer and storm sewer utility lines, shall be installed within the street network to the maximum extent feasible as determined by DPWES or shall be placed in locations that do not conflict with the landscaped open space areas and streetscape elements shown on the CDP/FDP. If there is no other option, utilities may be placed within open space or streetscape areas provided that the long-term health of trees and other plantings is ensured by the provision of sufficient soil volume as shown on the CDP/FDP, as determined by the UFMD. Minor adjustments to the type and location of plantings shall be permitted to avoid conflicts with utilities and other site engineering considerations if in substantial conformance with the CDP/FDP. The Applicant shall not place utility vaults under sidewalks designated for dedication to public use.

24. Tree Preservation. As part of site plan approval for the Proposed Development, the Applicant shall demonstrate that the Proposed Development will meet applicable Fairfax County requirements for tree preservation and the requirements of this Proffer 24.

- A. Tree Preservation Plan. The Applicant shall submit a tree preservation plan and narrative ("Tree Preservation Plan") as part of the first and all subsequent site plan submissions. The preservation plan and narrative shall be prepared by a Certified Arborist or a Registered Consulting Arborist, and shall be subject to the review and approval of UFMD. The Tree Preservation Plan shall include a tree

inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees located within the tree save area living or dead with trunks 8 inches in diameter and greater (measures at 4 ½ - feet from the base of the trunk or as otherwise allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture) and 25 feet outside of the proposed limits of clearing, in the undisturbed area and within 10 feet of the proposed limits of clearing in the area to be disturbed. All trees inventoried shall be tagged in the field so they can be easily identified. If permission is not allowed from the offsite property owner to tag trees, it shall be noted on the Tree Preservation Plan by providing written documentation between the applicant and the offsite property owner. The Tree Preservation Plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of disturbance shown on the CDP/FDP and those additional areas in which trees can be preserved as a result of final engineering. The Tree Preservation Plan and narrative shall include all items specified in PFM 12-0507 and 12-0509. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, compost tea, Cambistat, radial mulching, notes and details for asphalt removal around trees, and others as necessary, shall be included in the plan. Further with this application, the tree identified as "Tree No. 1 27" Robinia pseudoacacia, Black Locust" on the Existing Vegetation Map (Sheet C-5) is specified as to be preserved with no canopy credit taken. The existing canopy of this tree will not be factored as existing canopy to be preserved with credit. The Applicant will use regular tree preservation practices as an earnest effort to preserve this tree.

- B. Tree Preservation Walk-Through. The Applicant shall retain the services of a Certified Arborist or Registered Consulting Arborist, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree preservation walk-through meeting, the Applicant's Certified Arborist or Registered Consulting Arborist shall walk the limits of clearing and grading with a representative of UFMD to determine where adjustments to the clearing limits can be made to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are identified as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump-grinding machine in a manner causing as little disturbance as possible to adjacent trees and associated understory vegetation and soil conditions.
- C. Tree Preservation Fencing. All trees shown to be preserved on the Tree Preservation Plan shall be protected by tree protection fence. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and

placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on the demolition, and Phase I & II erosion and sediment control sheets, as may be modified by the "Root Pruning" condition below.

All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including any demolition of any existing structures. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the Applicant shall provide UFMD notice and the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by UFMD.

- D. Root Pruning. The Applicant shall root prune, as needed to comply with the tree preservation requirements of these Proffers. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the site plan submission. The details for these treatments shall be reviewed and approved by UFMD and accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not limited to, the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18-24 inches.
- Root pruning shall take place prior to any clearing or grading, or demolition of structures.
- Root pruning shall be conducted with the supervision of a Certified Arborist or Registered Consulting Arborist.
- A UFMD representative shall be informed when all root pruning and tree protection fence installation is complete.

STORMWATER MANAGEMENT

25. Stormwater Management. Stormwater management ("SWM") measures for the Property shall be provided as generally depicted on Sheet C-8 of the CDP/FDP and as approved by DPWES at the time of site plan approval. The stormwater management techniques may include, but are not limited to, the following: underground detention vault, permeable pavement, vegetated swale, green roofs or other techniques permitted under the PFM and as approved by DPWES. All such facilities shall be located in a manner that is in substantial conformance with the CDP/FDP. Underground stormwater detention shall be provided in conformance with the conditions of DPWES Waiver #4606-WPFM-002-1.

At a minimum, at the time of site plan approval, the Applicant shall demonstrate a reduction in the impervious area over the existing conditions sufficient to support a 2000 CF runoff reduction associated with 2-year and 10-year storm events pursuant to the appropriate PFM calculations. In addition to such runoff reduction, the Applicant shall utilize other stormwater techniques to detain a minimum of 1200 CF associated with 2-year and 10-year storm events in accordance with the PFM. Adequate outfall shall be demonstrated in accordance with the PFM, as determined by DPWES. Potential LID/BMPs for the Property are depicted on Sheet C-8 and include a green roof, permeable pavers, soil amendments (treat sidewalks) and vegetated swales. The Applicant shall incorporate the potential LID/BMPs to achieve a minimum twenty percent (20%) reduction of the existing total phosphorous loading which is above the minimum PFM requirements.

In addition to meeting minimum PFM requirements, the Applicant shall implement stormwater techniques to meet LEED SSc 6.1 and SSc 6.2 requirements to the extent possible within the LEED boundary as noted on Sheet C-8.

Prior to site plan approval for the Proposed Development, the Applicant shall execute an agreement with the County in a form satisfactory to the County Attorney (the "SWM Agreement") providing for the perpetual maintenance of all stormwater management facilities that are part of the Proposed Development ("SWM Facilities"). The SWM Agreement shall require the Applicant (or its successors) to perform regular routine maintenance of the SWM Facilities and to provide a maintenance report annually to the Fairfax County Maintenance and Stormwater Management Division of DPWES, provided DPWES requests such a maintenance report. The SWM Agreement also shall address easements for County inspection and emergency maintenance of the SWM Facilities to ensure that the facilities are maintained by the Applicant in good working order.

TRANSPORTATION IMPROVEMENTS

26. Right-of-Way for Little River Turnpike. As part of the site plan approval for the Proposed Development, the Applicant shall reserve an area along its frontage with Little River Turnpike (within the Tail Piece, as defined below) approximately 122.5 feet from the existing centerline of Little River Turnpike for future dedication in fee simple upon demand by Fairfax County. The Applicant shall dedicate and convey in fee simple to the Board of Supervisors the reserved area upon written demand by the County for public street purposes.

27. Right-of-Way and Construction for Markham Street. As part of the site plan approval for the Proposed Development, the Applicant shall dedicate in fee simple the right-of-way along Markham Street, as shown on Sheet C-7, to the Board of Supervisors. Subject to VDOT approval, the Applicant shall construct widening and frontage improvements, and implement lane restriping as necessary for Markham Street as shown on Sheets C-6 and C-7 of the CDP/FDP with the proposed right-of-way dedication line set a minimum of 47 feet from the existing centerline of Markham Street. Such improvements shall ultimately provide for two (2) northbound lanes (one 12 feet wide; one 11 feet wide), a future five foot (5') on-road bicycle lane, a nine and one-half foot (9.5') wide landscape panel, a six (6) foot wide sidewalk, and right-of-way one foot (1') behind the sidewalk, as depicted on the CDP/FDP. The extent of such transitions as may be required by VDOT shall be determined at the time of site plan submission.

With the exception of striping the bicycle lane, the Applicant shall complete and open such improvements to vehicular traffic (but not necessarily have such improvements accepted by VDOT) prior to the issuance of the first RUP for the Residential Units.

28. Sight Distance and Utility Considerations. If VDOT determines at the time of site plan approval that street tree locations conflict with either the sight distance requirements set forth in the applicable Transportation Design Standards or with utility requirements, and good faith efforts have been made to gain necessary approval of such conflicting trees by making minor adjustments to their locations or by removing their lower branches but VDOT, the County or the applicable utility company does not approve such street tree locations, then such tree(s) may be deleted and replaced at an alternative location on the Property, so long as the alternative location is coordinated with the UFMD. If there is no feasible alternative location, then the Applicant shall make a payment to the Fairfax County Tree Preservation and Planting Fund in the amount of the cost of the trees not being installed and such payment shall be used for planting trees elsewhere within the Annandale CBC. While trees may be deleted or relocated in response to VDOT requirements, this does not relieve the Applicant from meeting the 10-year tree canopy requirements, as shown on the CDP/FDP.

29. Local Street along Northern Boundary. As part of the site plan approval for the Proposed Development, the Applicant shall dedicate in fee simple to the Board of Supervisors right-of-way along the northern boundary of the Property, as shown on Sheet C-7 of the CDP/FDP and labeled as "Maple Place." Prior to the issuance of the first RUP or Non-RUP for the Proposed Development, the Applicant shall construct a one-half section of a local street along such northern boundary of the Property as shown on Sheet C-7 of the CDP/FDP. The one-half section shall initially be used as a driveway for the purpose of serving the parking structure entrance and loading area on the Property. The one-half section shall be constructed to local street standards, but shall remain a privately maintained driveway until the remaining one-half section to the north is constructed by others and/or the completed roadway is extended through the adjacent properties to the east to Annandale Road. In order to assist in the construction of both one-half sections, the Applicant shall either obtain a temporary grading and construction easement from the adjacent property owner to allow the entire roadway to be graded with the construction of the Applicant's one-half section or the Applicant shall grant necessary temporary grading and construction easements to permit others to complete the second one-half section of the local road or to the extension of the local road east to Annandale Road which shall be constructed by others. At such time when the local street is extended to Annandale Road, the Applicant shall diligently pursue VDOT acceptance of improvements to the local street, for secondary street maintenance in accordance with the process outlined in VDOT's Secondary Street Acceptance Requirements (the "SSAR"), as amended, including seeking VDOT's written certification that such street and/or improvements have been constructed in a manner consistent with VDOT standards and compliant with all applicable regulations in place at the time the future local street is completed and requested to be accepted ("VDOT's Written Certification"). In the event the Board of Supervisors has not requested that VDOT accept the new public street or improvements into the secondary street network for maintenance within five (5) years of VDOT's Written Certification, such street may be retained by the Applicant upon notification to, and the concurrence of FCDOT, as a private street subject to a public access and maintenance agreement in a form acceptable to the County Attorney. In such event, a PCA, CDPA and/or FDPA will not be required. The Applicant shall maintain its one-half section until such time that the local street

is accepted into VDOT's maintenance system. If construction of the Applicant's one-half section requires a retaining wall to be constructed adjacent to the property line to the north, then Applicant shall remove the retaining wall located along the northern property line as part of its responsibilities to diligently pursue VDOT acceptance of improvements to the local street in accordance with the process outlined in the SSAR.

30. Tail Piece (to Little River Turnpike). The 20 foot by 150 foot land area (approximately 3,000 square feet) which extends from the southern boundary of the Property to Little River Turnpike (such strip of land to be referenced as the "Tail Piece"), as depicted on the CDP/FDP, has not been included in this Application for density or development purposes, but is hereby reserved to facilitate future redevelopment of the abutting parcels by others or for public use. Subject to the County's review and approval, and after the Applicant dedicates a portion of the Tail Piece to the County pursuant to Proffer 26, owners of the two abutting parcels may use the residual portion of the Tail Piece in the future to provide additional land area, for consolidation potential or for access. The Tail Piece may be severed from the remainder of the Property without the necessity of a PCA, CDPA or FDPA for the above listed purposes. As an interim improvement, the Applicant shall improve the Tail Piece with a sidewalk and landscaping as shown on Sheet L-1 of the CDP/FDP. The Applicant agrees to maintain the Tail Piece, including the sidewalk and landscaping, until it is transferred or dedicated to facilitate a future redevelopment along Little River Turnpike or another public use. The Applicant shall also use good faith efforts to design the south side of the parking structure to accommodate a future garage entrance from Little River Turnpike into the parking structure to allow more direct access to the Public Parking Spaces, and shall grant the necessary access easement to facilitate such direct access in the future. If the Tail Piece is severed from the Property, the Applicant shall continue to provide an access easement, as needed, to permit public access from the south. The future entrance to the parking structure shall be constructed by others at no cost to the Applicant.

31. Traffic Signal Timing Study. As part of the site plan process, if VDOT determines that a signal timing study is necessary because of the Proposed Development, the Applicant shall submit a signal timing study for the signalized intersection at Little River Turnpike and Markham Street to determine appropriate signal timing modifications, if any. Such signal timing study shall be subject to review and approval by VDOT and shall provide for sufficient pedestrian crossing times in accordance with established standards as determined by VDOT.

32. VDOT Approval. All public street improvements, lane use designations, signal installations/modifications, crosswalks, bike lanes and/or other pavement markings proposed herein and reflected on the CDP/FDP are subject to VDOT review and approval at the time of site plan. Any changes to the same identified at time of site plan submission, shall be coordinated with the FCDOT and DPZ, and may not require a PCA, CDPA or FDPA.

TRANSPORTATION DEMAND MANAGEMENT

33. Transportation Demand Management. This Proffer sets forth the components of a transportation demand management ("TDM") program for the Proposed Development that shall be implemented by the Applicant, and its successors or assigns, to reduce peak hour vehicle trips generated by the residents of the Property. The proffered elements of the transportation demand management program shall be identified and more fully described in a Transportation Demand

Management Plan ("TDM Plan") the Applicant shall prepare, consistent with FCDOT's *TDM Guidelines for Fairfax County*, dated January 1st, 2013, and submit the same to FCDOT for review and approval as set forth below.

- A. Trip Reduction Objective. The objective of this TDM Program shall be to reduce the vehicle trips generated by residents of the Property (i.e., not including trips associated with the secondary retail uses), during weekday peak hours associated with the adjacent streets by 15%. This trip reduction percentage shall be multiplied by the total number of residential vehicle trips that would be expected to be generated by the dwelling units developed on the Property as determined by the application of the Institute of Traffic Engineers, 9th Edition, Trip Generation rates and/or equations (the "ITE Trip Generation"), and the number of trips determined by the product of such equation shall be referred to herein as the "Maximum Trips After Reduction." For purposes of this calculation, the maximum number of dwelling units proposed to be constructed on the Property is 310 and this number of units shall be applied to the calculation described in the preceding sentence.
- B. TDM Program Components. The TDM Program shall include, but not necessarily be limited to, the following components:
 - i. Property-wide TDM Program Management.
 - ii. Dissemination of County/Regional Program Information.
 - iii. Bicycle facilities, as set forth in Proffer 15.
 - iv. Regular monitoring/reporting.
 - v. Pedestrian facilities including a connection through the Tail Piece to Little River Turnpike.
 - vi. Shop near Home Marketing Program for tenants of the Residential Units.
 - vii. Participation in the Fairfax County Rideshare Program.
- C. Process of Implementation. The TDM Program shall be implemented as follows, provided that modifications, revisions, and supplements to the implementation process as set forth herein as coordinated with FCDOT can be made without requiring a PCA, CDPA and/or FDPA.
 - i. TDM Program Manager. The Applicant shall appoint and continuously employ, or cause to be employed, a TDM Program Manager ("TPM") for the Property. The TPM shall be appointed no later than sixty (60) days after the issuance of the building permit for the Property. The TPM duties may be part of other duties associated with the appointee. The Applicant shall notify FCDOT in writing within ten (10) days of the appointment of

the TPM. Thereafter the Applicant shall do the same within ten (10) days of any change in such appointment.

- ii. TDM Work Plan (Annual Report) and Annual Budget. If not already effectuated for the then-current calendar year, the TPM shall prepare and submit to FCDOT an initial TDM Work Plan ("TDMWP") no later than 180 days after issuance of the first building permit associated with the Property. Thereafter an Annual Report shall be submitted each January, which shall include, at a minimum:
 - (i) Details as to the start-up/on-going components of the TDM Program;
 - (ii) A determination of the applicable Maximum Trips after Reduction for the Property in accordance with Paragraph B above; and
 - (iii) Provision of the specific details associated with the monitoring and reporting requirements of the TDM program in accordance with the TDM plan.

The initial TDMWP and subsequent Annual Report shall be reviewed by FCDOT. If FCDOT has not responded with any comments within sixty (60) days after submission, then the TDM Program shall be deemed approved and the Program shall be implemented. If FCDOT responds with comments on the Program, then the TPM will meet with FCDOT staff within fifteen (15) days of receipt of the County's comments.

Thereafter but in any event, no later than thirty (30) days after the meeting, the TPM shall submit such revisions to the Program as discussed and agreed to with FCDOT and begin implementation of the approved program.

Thereafter the TPM, in conjunction with each Annual Report summarizing the results of the TDM Program to be submitted no later than April 15th (the "Annual Report"), shall update the Program for each succeeding calendar year and modify or enhance program elements. The Annual Reports shall be subject to the same review and approval process as described in this Proffer 33.C.ii for the initial TDMWP.

- iii. TDM Account. If not previously established, the TPM shall establish a separate interest bearing account with a bank or other financial institution qualified to do business in Virginia (the "TDM Account") within thirty (30) days after approval of the initial TDMWP and subsequent Annual Report in such amount to fund the program for the coming calendar year. All interest earned on the principal shall remain in the TDM Account and shall be used by the TPM for TDM purposes. The TDM Account shall be funded by the Applicant, through the TPM. Funds in the TDM Account

shall not be utilized for purposes other than to fund TDM strategies/programs and/or specific infrastructure needs as may be approved in consultation with FCDOT.

Funding of the TDM Account shall be in accordance with the budget for the TDM Program elements to be implemented in a year's program. The TPM shall provide written documentation to FCDOT demonstrating the establishment of the TDM Account within ten (10) days of its establishment. The TDM Account shall be replenished annually thereafter. The TDM Account shall be managed by the TPM.

- iv. TDM Incentive Fund. The "TDM Incentive Fund" is an account into which the Applicant through the TPM shall deposit contributions to fund a transit incentive program for initial purchasers/lessees within the Subject development. Such contributions shall be made one time at the rate of \$0.01 per gross square foot of new residential uses constructed on the Property and provided prior to the issuance of the first RUP. This amount shall be adjusted annually as set forth in Proffer 46 below. If funds remain after incentives are provided to initial lessees, the Applicant shall continue to provide incentives until the fund is depleted.
- v. Monitoring. The Applicant shall verify that the 15% trip reduction goals are being met through the provision of person surveys, trip counts of residential uses and/or other such methods as may be reviewed and approved by FCDOT. Surveys shall be conducted and traffic counts collected for the Property beginning with the first February after issuance of the first initial RUP. Surveys and traffic counts shall be conducted every two years until 85% of the Residential Units are occupied.
- vi. At such time as 85% of the Residential Units are occupied, then traffic counts shall be conducted annually until such time as three (3) consecutive counts show that the applicable Maximum Trips After Reduction for the Property are not exceeded. In such event, traffic counts will no longer be required and surveys will continue to be conducted every two years and annual reports shall be provided in accordance with Proffer 33.C.ii above.
- vii. If the TDM Program monitoring reveals that the Maximum Trips after Reduction for the Property with 85% of the units occupied is exceeded, then the TPM shall meet and coordinate with FCDOT to address, develop and implement such remedial measures as may be identified in the TDM Plan and Annual Report. In such event, traffic counts will be required in accordance with Proffer 32.C.viii below.
- viii. Additional Trip Counts. If an Annual Report indicates that a change has occurred that is significant enough to reasonably call into question whether the applicable vehicle trip reduction goals are continuing to be met, then FCDOT may require the TPM to conduct additional Trip Counts

within sixty (60) days to determine whether in fact such objectives are being met. If any such annual Trip Counts demonstrate that the applicable vehicle trip reduction goals are not being met, then the TPM shall meet with FCDOT to review the TDM strategies in place and to develop modifications to the TDM Plan to address the surplus of trips.

- D. Continuing Implementation. The Applicant through the TPM shall bear sole responsibility for the implementation of the TDM Program and compliance with this Proffer. The Applicant through the TPM shall continue to administer the TDM Program in the ordinary course in accordance with this Proffer including submission of Annual Reports.
- E. Notice to Owners. The current owner shall advise all successor owners and/or developers of their funding obligations pursuant to the requirements of this Proffer prior to purchase and the requirements of the TDM Program shall be included in all initial and subsequent purchase documents.

RECREATIONAL FACILITIES

34. Private Amenities and Facilities for Residents. The Applicant shall provide as part of the Proposed Development facilities designed to meet the on-site recreational needs of the future residents of such units, including, but not limited to, exercise rooms, swimming pools, activity courts, private plaza, club rooms, meeting rooms, media centers and cyber cafes. Pursuant to Paragraph 2 of Section 6-409 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall expend a minimum of \$1,700.00 per market-rate Residential Unit on such recreation facilities. In the event the total cost of the recreational improvements constructed on the Property is demonstrated to be less than \$1,700.00 per unit, the Applicant shall provide the remainder in a cash contribution to the Fairfax County Park Authority ("FCPA") for the development of active recreational facilities in the Annandale CBC prior to the issuance of the final RUP for the Residential Units.

35. Public Parks. The Applicant shall provide a variety of park spaces on the Property that will be open and accessible to the public as depicted on the CDP/FDP.

- A. Linear Park. An on-site open space public amenity area identified as the "Linear Park" shall be provided on the western side of Property along Markham Street, as shown on the CDP/FDP, to provide social, cultural and recreational opportunities for future residents and the larger Annandale CBC. For purposes of these proffers, the "Linear Park" shall be all of the common area, including sidewalks, shown on Sheet L-2 of the CDP/FDP (an area of approximately 24,500 square feet). The Linear Park may include, but not be limited to, special landscape treatments, pavement treatments, lighting, outdoor seating, pathways, exercise stations, dog waste bag dispensers, bike racks and other elements shown on the CDP/FDP and in the general locations shown on the CDP/FDP. In the future, the design of this Park may be modified as deemed appropriate by the Applicant provided, at a minimum, an equivalent level of street furniture and landscaping is provided. The Applicant shall retain fee simple ownership of the Linear Park and

shall record public access easement(s) pursuant to Proffer 22 ensuring that the park space is open to the public for period of time consistent with urban parks. The Applicant shall provide for perpetual private maintenance of the Linear Park. The Linear Park shall be completed prior to issuance of the first RUP for the Residential Units. The Linear Park shall be designed so that it does not preclude further expansion of its land area and activities upon redevelopment of the abutting parcels to the north and south that have frontage on Markham Street.

- B. Urban Park/Public Benefit Area. As part of the initial development of the Property, the Applicant shall improve the area on the eastern end of the Property to create an interim urban park, as shown on the CDP/FDP, to provide passive recreational opportunities for future residents of the building and the larger Annandale CBC ("Urban Park"). For purposes of these proffers, the Urban Park shall be all of the common area, including sidewalks, shown on Sheet L-2 of the CDP/FDP (an area of approximately 11,000 square feet). The Urban Park may include, but shall not be limited to, those treatments and elements shown on the CDP/FDP and in the general locations shown on the CDP/FDP. The Urban Park shall initially be designed to allow further expansion of its land area and activities upon redevelopment of the abutting parcels to the east that have frontage on Annandale Road. The Applicant shall dedicate and convey the Urban Park in fee simple to the Board of Supervisors at the time of site plan approval for the Proposed Development for either the park use or for another compatible public purpose and benefit (e.g., surface parking, structured parking). The Applicant shall be responsible for the Urban Park's maintenance, unless a different public use is established or the FCPA chooses to maintain it. Also at the time of site plan approval, a public access easement shall be recorded as required pursuant to Proffer 22 to ensure that the residents of Project and residents in the greater Annandale CBC have access to the Urban Park. The Urban Park shall be completed prior to issuance of the first RUP for the Residential Units. If the Urban Park converts from park use to another public use, the Applicant shall relocate any SWM facilities in it, if necessary.
- C. Parks Contribution. Prior to approval of the first RUP, the Applicant shall contribute the sum of Fifty Thousand Dollars (\$50,000) to the FCPA to off-set the demand on the existing park system generated by the Proposed Development and such funds shall be used specifically for park, recreation, trail and athletic field improvements in Annandale, intended to serve the future residents, as determined by the FCPA in consultation with the Supervisor for the Mason District.

36. Public Art. The Applicant shall install public art with a minimum value of Fifty Thousand Dollars (\$50,000) in the Annandale CBC community as part of the Proposed Development to express a sense of identity for the area or demonstrate civic and corporate pride in the community. Specifically, such public art shall be located within the Linear Park in a way that is inviting and engaging to the public in the general location depicted on Sheet L-1 of the CDP/FDP; provided, however, the Applicant reserves the right to install additional art features above that shown on the CDP/FDP in other parks, in the streetscape, at building entrances or other strategic public locations. The Applicant shall provide the public art prior to the issuance

of the 100th RUP for the Residential Units. Such art may be in the form of one or more sculptures, fountains or water features, interactive art, or other emerging forms of art and artistic expression.

PUBLIC SCHOOLS CONTRIBUTION

37. Public Schools Contribution. Per the Residential Development Criteria Implementation Motion adopted by the Board of Supervisors on September 9, 2002, and Criterion effective January 7, 2003, as adjusted, the Applicant shall contribute \$10,825.00 per expected new student (assuming a ratio of 0.106 students per residential unit) to the Fairfax County School Board to be utilized for capital improvements to schools that any students generated by the Property will attend. Such contribution shall be made prior to the issuance of the first RUP for the Residential Units and shall be based on the actual number of Residential Units built in the building. If, prior to the Applicant's payment of such contribution as set forth in this proffer, the County should increase the ratio of students per unit or the amount of the contribution per student, the Applicant shall increase the amount of the contribution to reflect the then-current ratio and/or contribution. If the County should decrease the ratio or contribution amount, the Applicant shall provide the greater of the two contribution amounts.

WORKFORCE HOUSING OPPORTUNITIES

38. Workforce Dwelling Units. The Applicant shall provide Workforce Dwelling Units ("WDUs") with the Proposed Development in the manner set forth below. The WDUs shall be administered as set forth in the Board of Supervisors' Workforce Dwelling Unit Administrative Policy Guidelines, adopted October 15, 2007, in effect as of the approval date of this Application ("Policy Guidelines"), except as modified by the following provisions. Where this Proffer conflicts with the Policy Guidelines, this Proffer shall control the administration of the WDUs.

A. Location of WDUs.

i. Default Option – WDUs in New Building. The Applicant shall provide 20% of the Residential Units constructed as part of the Proposed Development as WDUs in the new building. These Residential Units shall be made available in five (5) tiers as follows: (i) two percent (2%) shall be affordable for households earning up to and including sixty percent (60%) of the Area Median Income ("AMI"), (ii) three percent (3%) shall be affordable for households earning up to and including seventy percent (70%) of the AMI, (iii) five percent (5%) shall be affordable for households earning up to and including eighty percent (80%) of the AMI, (iv) five percent (5%) shall be affordable for households earning up to and including one hundred percent (100%) of the AMI, and (v) five percent (5%) shall be affordable for households earning up to and including one hundred twenty percent (120%) of the AMI. The mix of WDUs under this option shall be determined by the Applicant among efficiency/studio, one-bedroom and/or two-bedroom units.

ii. Alternative Option – WDUs in the New Building and Units at The Parliaments. If the Applicant meets the requirements of this subsection, it may elect to provide WDUs in a combination of both the Proposed Development and off-site at The Parliaments property located at 7409 Eastmoreland Road and identified on Fairfax County Tax Map No. 71-1

((01)) 77 ("The Parliaments"), in accordance with the terms of this subsection. The Parliaments is an existing multi-family dwelling project with a total of 750 dwelling units located on the western side of Markham Street opposite the Property, and is owned, controlled and managed by entities affiliated with the Applicant. If the Applicant is able to and chooses to proceed under this option, then the following WDUs shall be provided: twenty-five (25) Residential Units in the new building constituting the Proposed Development and fifty (50) units located at The Parliaments. All of the twenty-five (25) WDUs located in the Proposed Development shall be affordable to households earning up to and including eighty percent (80%) of the AMI. The mix of WDUs for these Residential Units shall be eight (8) efficiency/studio units, nine (9) one-bedroom units and eight (8) two-bedroom units. All of the fifty (50) WDUs located at The Parliaments shall be affordable to households earning up to and including seventy percent (70%) of the AMI. The mix of WDUs for the units at the Parliaments shall be twenty-five (25) two-bedroom units and twenty-five (25) three-bedroom units. In order to be able to exercise this option, the Applicant must demonstrate to the reasonable satisfaction of the Fairfax County Department of Housing and Community Development ("DHCD"), by no later than the issuance of the building permit for the Proposed Development, that the owner/ground lessor, the ground lessee and any lender or lienor of The Parliaments shall join or enter into an unsubordinated recordable WDU declaration that is appropriate (in the reasonable determination of DHCD) for the WDU commitment contained in this Proffer, with such Declaration being recorded prior to the first WDU being offered for rent. Under this option, (a) the Applicant and the owner of The Parliaments shall begin to offer available units at The Parliaments upon the issuance of the building permit for the Proposed Development in order to gradually comply with the requirement as existing two-bedroom and three-bedroom units turn over and become available for new qualified tenants, (b) the WDUs at The Parliaments must be maintained at comparable levels of quality and service that they receive as of the date this Application is approved, and must continue to be maintained to the same standard as non-WDUs at The Parliaments, and (c) different units at both the Proposed Development and The Parliaments may be used to meet the WDU commitment (i.e., the WDU units may "float") provided they meet the size, type and quality requirements stated above.

B. Rental Workforce Dwelling Units. Notwithstanding Sections 8 and 13 of the Policy Guidelines, the Applicant shall have the right to lease rental WDUs to tenants at market rates (as determined by the Applicant) in the event the Applicant, despite good faith marketing efforts in coordination with DHCD, is unable to lease such rental WDUs at the workforce housing rates permitted under the Policy Guidelines within ninety (90) days of DHCD's execution of the Notice of Availability and Rental Offering Agreement due to the lack of prospective tenants who meet the income eligibility criteria established by DHCD and if all market rate units with the same bedroom count as the unlet WDUs have been rented. In addition, the Applicant shall demonstrate to DHCD that the unlet WDUs were marketed in a manner consistent with the market rate units. At any time during which: (a) any rental WDUs are leased to tenants at market rates in accordance with the preceding sentence, and (b) any rental dwelling unit(s) within the Proposed Development is/are vacated and become(s) available for rent, the Applicant shall conduct good faith marketing efforts in coordination with DHCD to lease any such available unit(s) at the workforce housing rates permitted under the Policy Guidelines. In the event the Applicant, despite such good faith marketing efforts in coordination DHCD, is unable to lease such available unit(s) at the workforce housing rates permitted under the Policy Guidelines within ninety (90) days of the vacancy of such unit(s) due to the lack of

prospective tenants who meet the income eligibility criteria established by DHCD, the Applicant shall have the right to lease such unit(s) to tenants at market rates (as determined by the Applicant). It is the intent of this Proffer 38(B) that the Applicant shall have a continuing obligation to make good faith efforts to lease vacated and available rental units within the Proposed Development to income eligible tenants in accordance with the foregoing procedures at any time the number of rental WDUs occupied by income eligible tenants is less than the number of rental WDUs required under these Proffers. Further, the Applicant agrees that if it is discounting market rate units in such a manner that the units might be at a lower rental rate than the WDU rental rate, then the Applicant must also discount the WDUs in the same manner.

C. Alternative Administration. Notwithstanding the foregoing, the Applicant reserves the right to enter into a separate binding written agreement with the appropriate Fairfax County agency as to the terms and conditions of the administration of the WDUs following approval of this Application. Such an agreement shall be on terms mutually acceptable to both the Applicant and Fairfax County and may occur after the approval of this Application. Neither the Board of Supervisors nor Fairfax County shall be obligated to execute such an agreement. If such an agreement is executed by all applicable parties, then the WDUs shall be administered solely in accordance with such agreement and the provisions of this Proffer shall become null and void. Such an agreement and any modifications thereto shall be recorded in the land records of Fairfax County.

GREEN BUILDING

39. Green Building for the Residential Units. The Applicant shall select one of the following programs to be implemented and will inform the Environment and Development Review Branch ("EDRB") of DPZ which program the Applicant has chosen as part of the site plan submission for the Proposed Development.

- A. LEED New Construction or LEED for Homes Multifamily Mid-Rise. If the Applicant selects LEED New Construction or LEED for Homes Multifamily Mid-Rise, then the Applicant will include, as part of the site plan submission and building plan submission, a list of specific credits within the most current version of the U.S. Green Building Council's Leadership in Energy and Environmental Design-for Homes Multifamily Mid-Rise (LEED for Homes Multifamily Mid-Rise) or LEED-NC rating system determined to be applicable to the residential building in consultation with the EDRB. A LEED-accredited professional ("LEED-AP") who is also a professional engineer or licensed architect will provide certification statements at both the time of site plan review and the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED Silver certification of the project.

In addition, the Applicant will designate the Chief of the EDRB as a team member in the USGBC's LEED Online system if available with the rating system selected. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not

be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.

Prior to building plan approval, the Applicant will submit documentation, to the EDRB, regarding the U.S. Green Building Council's preliminary review of design-oriented credits in the LEED program if available with the rating system selected. This documentation will demonstrate that the residential building is anticipated to attain a sufficient number of design-related credits that, along with the anticipated construction-related credits, will be sufficient to attain LEED Silver certification. Prior to release of the bond for the project, the Applicant shall provide documentation to the EDRB demonstrating the status of attainment of LEED Gold certification or a higher level of certification from the U.S. Green Building Council for the building.

If the U.S. Green Building Council's review of design-oriented credits indicates that the project is not anticipated to attain a sufficient number of design-related credits to support attainment of LEED Gold certification, the Applicant will post a "green building escrow" in the form of cash or a letter of credit from a financial institution authorized to do business in the Commonwealth of Virginia in the amount of \$2 per gross square foot of the residential building. This escrow will be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of LEED Silver certification, or higher level of certification, by the U.S. Green Building Council, under the most current version of the LEED for Homes Multifamily Mid-Rise rating system or the LEED-NC rating system. The provision to the EDRB of documentation from the U.S. Green Building Council that the building has attained LEED Silver certification will be sufficient to satisfy this commitment.

If the Applicant provides to the EDRB within one year of the time of the first extension of the bond, bond reduction or bond release, whichever comes first, documentation demonstrating that LEED Silver certification for the building has not been attained, but that the building has been determined by the U.S. Green Building Council to fall within three points of attainment of LEED Silver certification, fifty percent (50%) of the escrow will be released to the Applicant; the other fifty percent (50%) will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If the Applicant fails to provide to the EDRB by the time of the first extension of the bond, bond reduction or bond release, whichever comes first, documentation to the EDRB demonstrating attainment of LEED Silver certification or demonstrating that the building has fallen short of LEED Silver certification by three points or less, the entirety of the escrow for that building will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If the Applicant provides documentation from the USGBC demonstrating, to the satisfaction of the EDRB, that USGBC completion of the review of the LEED certification application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made to the Applicant or to the County during the extension.

- B. As an alternative to the actions outlined above, if applicable and if the project meets the eligibility criteria for the rating system, the Applicant may select, subject to EDRB approval, an alternate residential rating system such as Earth Craft or the 2012 National Green Building Standard (NGBS) using the ENERGY STAR ® Qualified Homes path for energy performance that may be implemented without an escrow. If one of the alternate residential rating systems listed herein is selected, as an alternative to the previous paragraphs, the Applicant shall note the selected system and provide a completed checklist of the anticipated options to be pursued for the specific rating system at the time of the site plan and building plan review. The Applicant shall demonstrate attainment of the selected certification from a rater recognized through the selected program prior to the bond release, bond reduction or the first extension of the bond, whichever comes first for the building. In the event certification is dependent on the post occupancy operation of the building, the Applicant shall demonstrate attainment of the selected certification prior to final bond release.

MISCELLANEOUS PROFFERS

40. Underground Utilities. The Applicant shall coordinate with utility companies (gas, electric, telephone, cable, etc.) to co-locate utilities where reasonably feasible. To the extent possible and as permitted by the applicable utilities companies, the Applicant shall use best efforts to place all utilities exclusively serving the Property underground, except for transformers, street lights and other customary and standard utility boxes typically located above ground. Sheet S-4 of the CDP/FDP depicts the utilities that are anticipated to be placed underground and those existing utilities that will remain above ground. Upon request by the Applicant, the Zoning Administrator may waive/modify the requirement to place utilities underground without approval of a PCA, CDPA or FDPA upon a determination that such requirement (a) is infeasible or impractical or (b) would require the Applicant to secure easements or consents from third-parties that, despite having been diligently pursued by the Applicant, are not available. If such utility was shown on the CDP/FDP as being placed underground, then the Applicant shall agree to contribute to an underground utility fund serving the Annandale CBC an amount equal to the cost savings of not placing the line underground, up to a maximum contribution of \$25,000.00 per pole, box or line.

41. Advance Density Credit. The Applicant reserves intensity/density credit as may be permitted by the provisions of the Zoning Ordinance for all eligible dedications described herein or as may be required by the County, VDOT or any other public entity.

42. Zoning Administrator Consideration. Notwithstanding the foregoing, upon demonstration that despite diligent efforts or due to factors beyond the Applicant's control,

proffered improvements such as, but not limited to, transportation, publicly accessible park areas, bike lanes and offsite easements, have been delayed (due to, but not limited to, an inability to secure necessary permission for utility relocations, VDOT approval for traffic signals, necessary easements and/or site plan approval, etc.) beyond the timeframes specified, the Zoning Administrator may agree to a later date for completion of these proffered improvement(s).

43. Retaining Walls. Retaining walls not shown on the CDP/FDP that may be needed on the Property as a result of final engineering design shall be a maximum height of four (4) feet. All retaining walls shall be constructed of interlocking blocks or concrete with an architectural finish.

44. Construction Waste Management. The Applicant shall recycle, reuse on site or on another site, or otherwise salvage at least fifty percent (50%) of the total construction waste generated during the demolition and removal of the existing improvements on the Property to divert such waste and debris from landfills and incineration facilities.

45. Counterparts. These Proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and all of which taken together shall constitute but one and the same instrument.

46. Annual Escalation Clause. All Proffers specifying monetary contributions shall adjust on a yearly basis from the base year of 2014 and change effective each January 1 thereafter, based on changes in the Consumer Price Index for all urban consumers (not seasonally adjusted) ("CPI-U") in effect in January of each year, as permitted by Section 15.2-2303.3 of the Code of Virginia, as amended.

47. Successors and Assigns. These Proffers will bind and inure to the benefit of the Applicant and its successors and assigns. Each reference to "Applicant" in this Proffer Statement shall include within its meaning and shall be binding upon Applicant's successor(s) in interest and/or developer(s) of the site or any portion of the site.

[Signature pages follow]

TITLE OWNER OF TAX MAP NO. 71-1 ((20)) 2:

**FAIRFAX INVESTORS LIMITED PARTNERSHIP,
L.L.P.**

By: Jonathan Farmelo
Name: Jonathan Farmelo President of J. Webb, Inc.
Its: General Partner

APPLICANT:

MARKHAM PLACE LLC

By: David Hillman
Name: DAVID HILLMAN
Its: managing member